

### **REMARKS**

Claims 51-55, 58, and 60-66 are pending in the present application. Claims 1-50, 57 and 59 were previously cancelled. In this Reply, Applicant has amended claims 51, 58, 60 and 64. No new matter has been added. Applicant reserves the right to reintroduce any deleted portions of the amended claims at a later time.

#### **35 U.S.C. § 101**

Claims 64-66 are rejected because the claimed inventions are allegedly directed to non-statutory subject matter. Independent claim 64 has been amended to recite “non-transitory computer readable medium.”

Accordingly, withdrawal of this rejection is respectfully requested.

#### **35 U.S.C. § 112, second paragraph**

Claims 51-55, 58 and 60 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention.

The Office Action states that (1) it is unclear whether the claimed system is the combination of the Clearinghouse server, the affiliate servers and the merchant server, or just the Clearinghouse server; (2) “it is not clear what structure in the [Clearinghouse] server does it take to merely ‘parse the http commands and what structure in the CH server is implied by all the subvariables?’”; (3) the 1<sup>st</sup> affiliate server is claimed merely as part of the intended use of the Clearinghouse, and thus not given patentable weight, and accordingly, “the CH is interpreted as merely configured to send and receive communications”; (4) same as 3 with respect to the 2<sup>nd</sup> affiliate server; and 5) “the only part that has real meaning for the CH is the last part about

assigning compensation by the CH based on items i-iii. Thus for prior art application the prior art only needs to meet this last part of the claim”.

The system of claim 51 is directed to just the Clearinghouse server, which is selectively configured to interact with specific types of affiliate and merchant servers. The claim has been amended rendering the subvariable confusion issue moot. The 1<sup>st</sup> and 2<sup>nd</sup> affiliate server limitations must be given patentable weight as they alter the structure of the Clearinghouse server – for example, by describing the type of communication programming contained in the Clearinghouse server – and additionally, the limitations are not in the preamble (see, for example, MPEP § 2111.02). Applicant agrees that the final paragraph of claim 51 has “real meaning” and disagrees with the Office Action to the extent it indicates the other limitations of claim 51 do not have “real meaning.” As the MPEP and Federal Circuit make clear, “All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970); MPEP § 2143.03.

Accordingly, withdrawal of this rejection is respectfully requested.

**35 U.S.C. § 103(a)**

Claims 51-55, 58, and 60-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 7,249,056, to Crouthamel et al. (hereinafter “Crouthamel”) in view of U.S. Patent No. 6,804,960, to Landau et al. (hereinafter “Landau”), Official Notice #1 (with e.g. U.S. Patent No. 6,826,594 to Petterson (hereinafter “Petterson”) or Crouthamel as support) and further in view of Official Notice #2. Applicants traverse these rejections for the reasons discussed below.

Applicant’s claimed technology relates to Internet web sites and, more specifically, to successive web site referrals that result in an electronic purchase.

The purpose of Crouthamel is to enable merchants, who have different database formats than partner websites, to conduct business on these partner websites by providing a clearinghouse for translating the merchant database formatted data into data compliant with the partner database and vice versa. The purpose of Landau on the other hand is to allow for affiliates in two separate affiliate systems to be able to refer their users to each other without merging the two affiliate systems. Thus, there would have been no motivation or reason for a person skilled in the art to have combined these two systems. Moreover, the proposed combination of Landau to Crouthamel would render the system unsatisfactory for its intended purpose. (See MPEP § 2143.01(V)). For example, if successive websites were tracked without a clearinghouse as taught by Landau, then the data translation could not take place in the clearinghouse of Crouthamel and product data could not be properly accessed by a user.

Independent claim 61 teaches in part, in response to an indication that a user completed an electronic purchase via a web page of a merchant server, assigning compensation to a first server and to a second server based on a record of a referral from the first server to the second server and a record of a referral from the second server to the merchant server (this feature is referred to in the Office Action as “successive referrals”). The Office Action concedes that the above limitations are not explicit in Crouthamel and does not allege that they are taught by Landau, nor are they. Rather, the Office Action uses “Official Notice” to reject the claims based on the assertions that it is old and well known that “central accounting via a central hub is well-known for accounting convenience for the affiliates”. Applicant traverses the Official Notice #1, at least for the reasons put forth in Applicant’s previous response dated February 4, 2010, pages 11-12. Moreover, “central accounting via a central hub” is not a claimed feature, and does not teach the above mentioned features.

Applicant previously asserted that the Official Notice #1 as allegedly supported, is insufficient to suggest the claimed limitations provided in the combination. A key feature of claim 1 is that a single purchase results in two separate payments, each to different entities (or servers). Such a limitation is clearly not taught by any of the references cited. For example, in Landau, Fred.com does not share its commission with CDMerchant.com, nor does Ernie share his commission with MusicMemorabilia.com (see Landau col. 19, lines 25-65). The Office Action seems to agree with this assertion (Office Action page 13), and seeks to remedy this deficiency by adding Official Notice #2. Applicant requests that the Office provide documentary support for Official Notice #2 (see MPEP 2144.03). Furthermore, even if Official Notice #2 is supported, it fails to teach the features cited above. Specifically, Official Notice #1 and #2, along Crouthamel and Landau, both singularly and in combination, fail to teach or suggest the following features of claims 61, 51, and 64:

in response to an indication that said user computer completed an electronic purchase via a web page of said merchant server, assigning compensation to said first server and to said second server based on said record of said referral from said first server to said second server and said record of said referral from said second server to said merchant server.

wherein said clearinghouse server is operable to assign compensation to each of said first affiliate website and said second affiliate website in response to (i) a network-connected user's use of said primary referral link provided by said first affiliate website to reach said second affiliate website; (ii) said user's use of said secondary referral link provided by said second affiliate website to reach said merchant website; and (iii) said user's completion of the electronic transaction with said merchant site.

in response to an indication that said user computer completed an electronic purchase via a web page of said merchant server, assigning compensation to said first server and to said second server based on said record of said referral from said first server to said second server and said record of said referral from said second server to said merchant server.

As mentioned above, "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ

494, 496 (CCPA 1970); MPEP § 2143.03. The Office Action's general assertions that "central accounting via a central hub" and "splitting commissions between several parties participating in facilitating completion of a single service or transaction" are well-known, fail to teach or suggest the above cited limitations. The references fail to remedy these deficiencies, and thus, the references and Official Notices fail to teach or suggest these features of claims 51, 61, and 64.

Accordingly, withdrawal of the rejection is respectfully requested.

Arguments not presently presented are not deemed waived. Rather, Applicant believes the above remarks are sufficient to overcome the rejections.

Conclusion

In view of the foregoing, applicants submit that claims 51-55, 58, and 60-66 are allowable. If the Examiner believes that the rejections of record have not been overcome, the Applicant requests a telephonic interview between the Examiner and the undersigned before a new Office Action is issued.

No fee is believed to be due with this submission other than those authorized on page 1 of this response. However, if any other fees are due, please charge such fees to Troutman Sanders LLP Deposit Account No. 20-1507.

Respectfully submitted,

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